

Who's Responsible? A summary of "division of powers" in Canada

The first step to any environmental work (be it policy advice/advocacy, legal case, or both), is to determine who's responsible for (or has jurisdiction regarding) the issue of concern.

In the Canadian legal system*, answering the question "who's responsible" requires that we consider how, back in the 1860s, the drafters of the Canadian Constitution made decisions about government responsibilities.

When writing what has since become the Canadian Constitution, the legal drafters did not deal with the "natural environment" as a complete area of responsibility. Responsibility for fish and fish habitat lies solely with the federal government. Responsibility for international agreements lies solely with the federal government. Responsibility for managing forests lies solely with the provincial government. Responsibility for creating local governments lies solely with the provincial government (and, as such, municipal powers only exist based on what authority the province delegates to them through laws, regulations, and policies). Responsibility for freshwater is not given exclusively to either the federal or provincial government; the authority is shared and is related to other listed "heads of power".

Here's a summary of the "heads of power" that relate to the "natural environment", including freshwater. The factors in determining jurisdiction (eg, which level of government is responsible and/or which level of court hears a legal challenge) are: **nature of the problem** and **agencies involved**.

Federal responsibilities (*Constitution Act, 1867, s 91*):

- Peace, order and good government (POGG);
- Sea Coast and Inland Fisheries – s 91(12);
- Navigation and Shipping – s 91(10);
- Aboriginal issues – s 91(24);
- Criminal law – s 91(27); and
- Federal Works and Undertakings – s 92(10)

Provincial responsibilities (*Constitution Act, 1867, ss 92 and 92A*):

- Management of provincial public lands and forests – s 92(5);
- Property and Civil Rights – s 92(13);
- Matters of local or private nature – s 92(16);
- Non-renewable natural resources – s 92A; and
- Provincial Works and Undertakings – s 92(10)

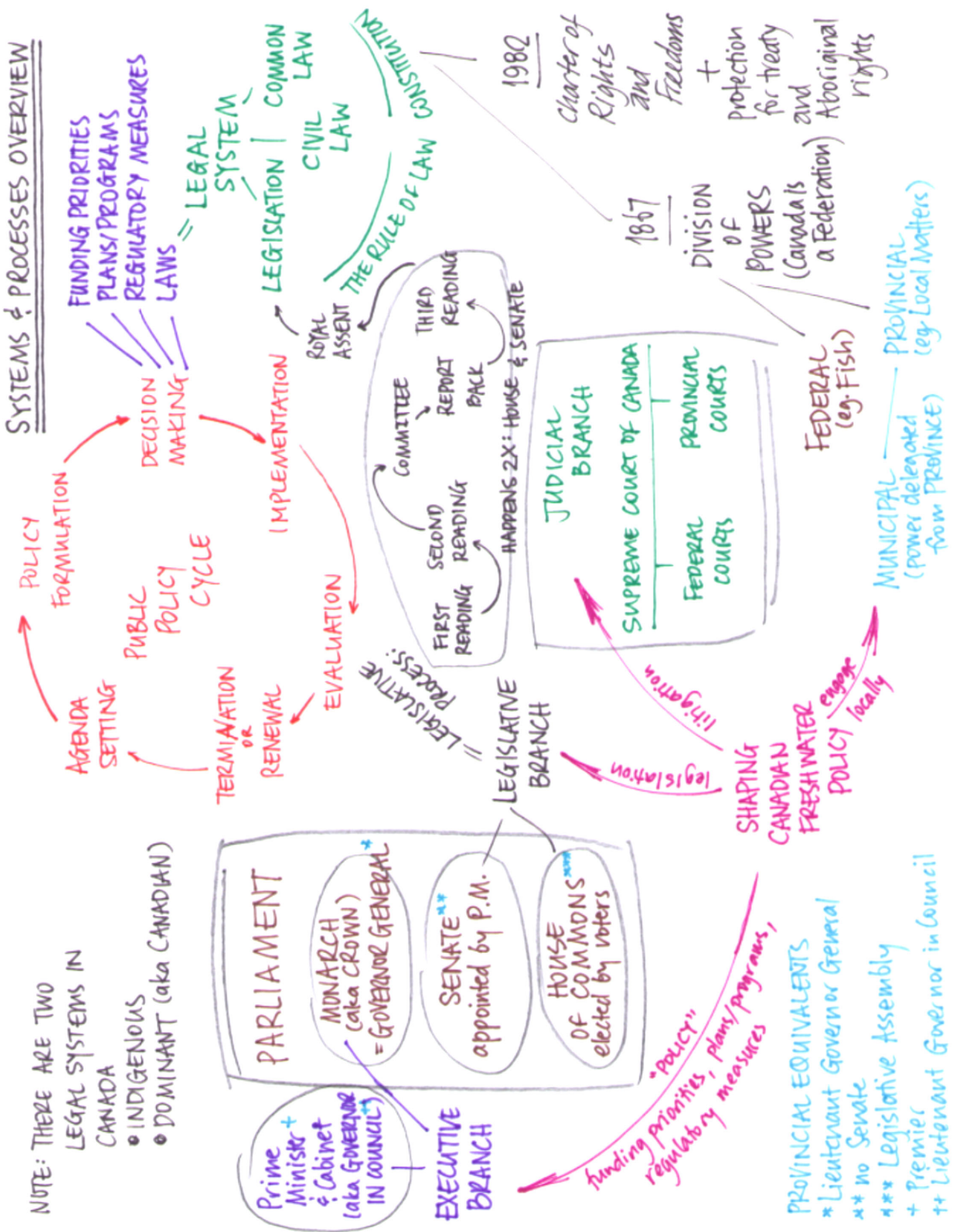
Indigenous jurisdiction is *complicated*. Internationally, there's the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Within the Canadian legal system, "aboriginal and treaty rights" are constitutionally protected (*Constitution Act, 1982, s 35*), as well as emerging legislative recognition of UNDRIP.

If you want to read more about:

UNDRIP, see https://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/
Canadian Constitution Acts, see http://laws-lois.justice.gc.ca/eng/Const/Const_index.html

* Within Canada, there are two types of legal systems – Let's call them Indigenous and Settler. Some Indigenous Peoples of Turtle Island (each with own legal system): Innu, Mi'kmaq, Cree, Anishinabek, Haudenosaunee, Dakota, Métis, Blackfoot, Shuswap, Salish, Haida, Dene and Inuit. Settler (aka Canadian legal system): evolved from European "common law" and "civil law" (Québec). Ideally, we'd braid and harmonize Indigenous and Settler legal orders. For the purposes of this summary, details are provided for Settler legal systems. For information about Indigenous Peoples, a great place to start is Indigenous Canada (online course offered by University of Alberta): <https://www.coursera.org/learn/indigenous-canada>.

SYSTEMS & PROCESSES OVERVIEW



NOTE: THERE ARE TWO LEGAL SYSTEMS IN CANADA

- INDIGENOUS
- DOMINANT (aka CANADIAN)



EXECUTIVE BRANCH

** "policy"*
Funding priorities, plans/programs, regulatory measures

PROVINCIAL EQUIVALENTS

- * Lieutenant Governor or General
- ** no Senate
- *** Legislative Assembly + Premier
- ++ Lieutenant Governor in Council